



1-28-05

3761

DFW

Attorney's Docket No. 5470.276

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: MacDonald et al.

Group Art: 3761

Application No.: 10/069,305

Examiner: Angel

Filing Date: June 6, 2002

For: *ANTIBODY DEPENDENT ENHANCEMENT (ADE) OF ALPHAVIRUS INFECTION*

Date: January 27, 2005

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT
AND ELECTION OF CLAIMS**

Claims 1-45 are pending in this application. In the outstanding Restriction Requirement dated December 28, 2004, claims 1-45 have been restricted into groups numbered I to XIII. In response to the Restriction Requirement, Applicants elect the claims of Group V (claims 27-32) with traverse.

The office action further requires an election of species; specifically, election of a species of subject. Applicants elect primates as a species. This election of species is made without traverse to the extent it is understood that, upon the finding of an allowable species, examination will continue with the non-elected species until all species have been examined or a non-allowable species is identified.

The traversal of the restriction is on the basis that at least the claims of Groups I - V and VIII - X are linked by a single general inventive concept under PCT Rule 13.1. In particular, the claims of Groups I - V and VIII - X are joined by the unifying inventive concept of administering an alphavirus vector and administering an antibody that specifically binds thereto. This unifying feature is novel over the art.


The Restriction Requirement erroneously states that the "technical feature linking the claims is the method of introducing and expressing a nucleotide sequence in a cell by administering an alphavirus vector comprising a

heterologous nucleotide sequence to a subject that has antibodies that specifically bind to the vector (e.g., see claim 36) because it is the broadest method and it is encompassed by all the other methods." Applicants respectfully note that this statement is incorrect. The invention is based on the novel concept of administering an alphavirus vector in the presence of an antibody that binds thereto. Administration of an antibody to a subject that already has antibodies (e.g., claim 36) is one way of achieving this – it is not the broadest method of the invention and does not encompass the methods of all the other groups.

The claims of Groups I – V and VIII – X are linked by common technical feature that they all recite a method of administering an alphavirus vector and administering an antibody that binds thereto. This unifying feature is not disclosed by the cited Parrington et al. reference. Accordingly, Applicants respectfully submit that Groups I – V and VIII – X should be examined concurrently.

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw the outstanding Restriction Requirement. This application is in condition for substantive examination, which action is respectfully requested.

Respectfully submitted,


Karen A. Magri
Registration No. 41,965

Customer No. 20792
Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

CERTIFICATE OF EXPRESS MAILING

"Express Mail" mailing label number: EV 473658240 US Date of Deposit: January 27, 2005
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Cathy A. Schetzina